

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PINNACLE GREENBRIAR, LLC, PINNACLE  
NOVI, LLC, PINNACLE ORION, LLC,  
PINNACLE ROCHESTER, LLC, PINNACLE  
RED RUN DEVELOPMENT, LLC, PINNACLE  
BOGIE LAKE, LLC, PINNACLE BIRKDALE  
POINT, LLC, PINNACLE KIRKWAY, LLC, and  
BIRKDALE POINT INVESTORS, LLC,

Petitioners-Appellants,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

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UNPUBLISHED  
October 16, 2018

No. 340646  
Michigan Tax Tribunal  
LC No. 15-006908-TT

Before: CAVANAGH, P.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Petitioners, nine related limited liability companies, appeal by right the Michigan Tax Tribunal's final opinion and judgment affirming respondent, Department of Treasury's, final assessments against petitioners for unpaid taxes and interest due under the State Real Estate Transfer Tax Act (SRETTA), MCL 207.521 *et seq.* We affirm.

**I. BACKGROUND**

Petitioners are real estate owners and developers that are wholly owned by Diversified Property Group, LLC. At issue in this case are a number of transactions that took place in tax years 2009 through 2012. Acting individually, petitioners would purchase and develop land, establishing their various properties as site condominium units, which would then be sold to buyers by way of land contract. At the same time, each buyer would enter a contract with a builder affiliated with petitioners, under which the affiliated builder agreed to construct a home on the vacant lots. The affiliated builders were not parties to the land contracts and had no ownership interest in the lots. Likewise, the petitioners were not parties to the construction contracts and were not involved in building the residential unit on the lot.

In each of these transactions, a form land contract and a standard construction contract were used. The land contract incorporated by reference the construction contract and conditioned conveyance of full legal title, as well as execution of a warranty deed for the

property, on payment of both the land contract and construction contract. The land contracts were never recorded with the applicable register of deeds. When construction of the buyer's home was completed and the buyer tendered all amounts due under both the land contract and construction contract, the petitioner with whom the buyer had contracted would transfer full legal title in the form of a warranty deed that was subsequently recorded at the register of deeds. Petitioners then remitted tax under the SRETTA based on the value of the real property conveyed in the land contract—that is, the value of the vacant land before the residential home was built on it.

After an audit, respondent determined that petitioners had underpaid the required transfer tax by basing their calculations on the value of the land only. To calculate the amount due, respondent's auditor subtracted the amount paid from the total amount that should have been remitted based on the combined price of the home and lot. In other words, respondent assessed an additional tax liability based upon the value of the property conveyed by the warranty deed, i.e., the lot as improved by construction of a home. Respondent issued a final bill for taxes due to each petitioner, equaling a total of \$343,219.75.

Thereafter, petitioners filed a petition with the Michigan Tax Tribunal, challenging the assessment.<sup>1</sup> Petitioners alleged that they had satisfied their transfer tax liabilities because, under the applicable statutes, the tax was only due on the value of the land transferred at the time of the land contracts' execution. The tribunal disagreed, holding that “inasmuch as the warranty deeds at issue in this case transferred and conveyed title of improved lots, Respondent properly assessed the transfers based on the value of both the land and the newly constructed homes.” This appeal followed.

## II. STANDARD OF REVIEW

“Where fraud is not claimed, this Court reviews the tribunal's decision for misapplication of the law or adoption of a wrong principle.” *Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006). The tribunal's factual findings are conclusive if supported by “competent, material, and substantial evidence on the whole record.” *Id.* (quotation marks and citation omitted). We review issues of statutory interpretation de novo. *Id.*

## III. ANALYSIS

On appeal, petitioners argue that the tribunal erred by affirming the final assessments because the tax should have been determined based on the value of the property transferred at the time of the land contracts' execution, i.e. the value of the vacant lots. We disagree.

Section 3 of the SRETTA imposes a tax on written instruments that convey property when they are recorded. MCL 207.523(1). Section 3 specifically provides, in relevant part:

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<sup>1</sup> Although respondent issued separate final assessments to each petitioner, petitioners filed a single petition requesting that all the assessments be joined into a single docket.

(1) There is imposed, in addition to all other taxes, a tax upon the following written instruments executed within this state *when the instrument is recorded*:

(a) Contracts for the sale or exchange of property or any interest in the property or any combination of sales or exchanges or any assignment or transfer of property or any interest in the property.

(b) Deeds or instruments of conveyance of property or any interest in property, for consideration. [MCL 207.523(1)(a) and (b) (emphasis added).]

The transfer tax imposed under § 3 is the responsibility of the seller or grantor. MCL 207.523(2). Section 5(1) further specifies how the transfer tax is calculated, providing that “the tax imposed section[] 3 . . . is levied at the rate of \$3.75 for each \$500.00 or fraction of \$500.00 of the *total value of the property being transferred*.” MCL 207.525(1) (emphasis added).

Read together, the plain language of §§ 3 and 5 indicates that the tax imposed is measured by looking to the value of the property transferred by the taxable instrument. First, § 3 delineates that specific instruments are taxable—instruments that are recorded and convey an interest in property. Next, § 5 makes an express cross-reference to those taxable recorded instruments delineated in § 3 by stating that the tax in § 3 is levied at a particular rate based on the “value of the property *being transferred*.” (Emphasis added.) We infer from this internal cross-reference that the Legislature intended that the value to be considered for purposes of computing the transfer tax is that related to the transfer underlying the taxable instrument and not just any transfer of a property interest.

Our understanding of the statutory language is consistent with the Michigan Supreme Court’s decision in *Lake Forest Partners 2, Inc v Dep’t of Treasury*, 480 Mich 1046; 743 NW2d 881 (2008) (*Lake Forest II*). There, the developer petitioner entered into purchase agreements whereby the buyer agreed to purchase an unimproved lot and agreed to terms for constructing a new home on that lot. *Lake Forest Partners 2, Inc v Dep’t of Treasury*, 271 Mich App 244, 246; 720 NW2d 770 (2006) (*Lake Forest I*), rev’d by 480 Mich 1046. Consideration for the lots and the construction were provided for separately in the purchase agreement. *Id.* When the construction was complete, the petitioner executed a warranty deed transferring the property to the buyer. *Id.* When the deed was recorded, the petitioner paid transfer tax based only on the value of the lot when the purchase agreement was executed. *Id.* After an audit, the Department of Treasury determined that the petitioner should have paid transfer tax on the value of the lot and the home. *Id.* at 246-247. A panel of this Court reversed, but our Supreme Court issued a short order affirming Treasury’s decision that the measure for taxation included both the lot and the home. *Lake Forest II*, 480 Mich at 1046-1047. The Supreme Court reasoned:

The State Real Estate Transfer Tax Act, MCL 205.521 *et seq.*, taxes recorded instruments. MCL 207.523. In this case, the only recorded instrument was the deed. The “value” exchanged for that deed included both the cost of the lot and

the home; thus, the Tax Tribunal correctly held that that value was the proper measure for taxation. [*Id.* at 1047.<sup>2</sup>]

As in *Lake Forest*, the only recorded instruments in this case are the warranty deeds. Once construction of the buyer's home was completed, the buyer was required to pay consideration, including the cost of the lot and the cost of the home, in order to obtain the warranty deed; thus, the value exchanged for those deeds included both the cost of the lot and the home. The consideration paid for the warranty deeds reflects the value paid for the property being transferred, which is subject to taxation under §§ 3 and 5. Respondent, therefore, did not err in applying the statutory language during its audit to require petitioners to remit transfer tax based on the combined or total value of the lots *and* the newly constructed homes, and the tribunal did not err by upholding respondent's final assessments.

Petitioners argue that the language of the SRETTA requires that transfer tax be determined based on the value of the property transferred at the time of the land contracts' execution. According to petitioners, and relying on the SRETTA's definitions of "value" and "transfer," the execution of the land contracts effectuated a transfer of an equitable interest in the vacant real property, and the value considered in calculating transfer tax is that which existed upon execution of those contracts.<sup>3</sup>

Section 2 of the SRETTA defines the terms "transfer" and "value," as follows, respectively:

(e) "Transfer", unless otherwise exempt under this act, means the conveyance of title to or other transfer of a present interest or beneficial interest or any other interest in real property by any method . . . .

\* \* \*

(g) "Value" means the current or fair market worth in terms of legal monetary exchange at the time of the transfer. The tax shall be based on the value

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<sup>2</sup> Petitioners argue that *Lake Forest* is distinguishable because that case involved a single purchase agreement and a single seller, as opposed to separate agreements for the sale of the property and construction of a home, entered into by separate entities. Petitioners do not adequately explain the significance of these distinctions and, in our view, they are immaterial. Although the Supreme Court did not expressly rule on the issue of whether a land contract transfers an interest in property for purposes of the SRETTA in *Lake Forest II*, the Court clearly focused on the value of the transaction evidenced by the recorded instrument.

<sup>3</sup> A transfer of property rights does occur upon execution of a land contract. See *Gilford v Watkins*, 342 Mich 632, 637; 70 NW2d 695 (1955) ("It is well settled in this State that the vendee in a land contract is vested with the equitable title in the land, and that the legal title remains in the vendor and is held as security for the payment of the purchase price of the land . . . .") (quotation marks and citation omitted).

of the real property transferred and shall be collected at the time the instrument of conveyance is submitted for recording. [MCL 207.522]

These definitions do not support petitioners' position. First, petitioners' argument reads the definitions of "transfer" and "value" in isolation, effectively ignoring the interplay between § 3 and § 5 and the use of the terms "transfer" and "value" therein. Simply because the land contracts and payment exchanged at their execution for the vacant lots can be understood to fit within the statute's definitions of "transfer" and "value," when considered alone, does not mean that this transfer and the value then-exchanged must be used as the measurement for calculating the transfer tax. Instead, the statute must be viewed as a whole and these statutory definitions understood in the grammatical context and relative to their placement in the statutory scheme. See *Herman v Berrien Co*, 481 Mich 352, 366; 750 NW2d 570 (2008). And consistent with the Supreme Court's decision in *Lake Forest II*, the statute requires that the tax be based on the value exchanged for the transfer reflected in the recorded instrument.<sup>4</sup> To adopt petitioners' interpretation would not only conflict with the statute, but also with the Supreme Court's decision in *Lake Forest II* contrary to the principle that we are bound to follow the Supreme Court's decisions. See *State Treasurer v Sprague*, 284 Mich App 235, 242; 772 NW2d 452 (2009).

Next, petitioners' argument ignores that the land contracts in this case are not taxable under the SRETTA. As noted, § 3 imposes transfer tax only on written *recorded* instruments, and it is undisputed that the land contracts were not recorded. Under the plain terms of the SRETTA, then, they are not subject to taxation. Even if they had been recorded, the SRETTA exempts certain instruments from taxation, including "[a] land contract in which the legal title does not pass to the grantee until the total consideration specified in the contract has been paid." MCL 207.526(o). It follows that the value of the property when the land contracts were executed is irrelevant. Indeed, to agree with petitioners would effectively permit an unrecorded transfer to

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<sup>4</sup> Although not binding, we find the following analysis from the dissenting opinion in *Lake Forest I* persuasive:

The state real estate transfer tax is imposed only on the instrument that is actually recorded. The majority's construction of the statute would calculate the tax on the basis of a "transfer" that took place in an entirely different instrument, even though the recorded instrument—upon which the tax is actually imposed—*also* contains a transfer. This creates a complication that the Legislature did not intend from a plain reading of the statute. Indeed, the Legislature specifically provided for certain exceptions, such as land contracts, MCL 207.526(o), or instruments "to confirm title already vested in a grantee," MCL 207.526(n). If the Legislature had intended to impose a tax based on the *first* transfer, or based on *any* transfer, it could easily have said so. Instead, it refers to *the* transfer, logically referring to the transfer embodied in the instrument being recorded and on which the tax is imposed. Here, that refers to the transfer of legal title to the improved lot with the house on it. [*Lake Forest I*, 271 Mich App at 252 (DAVIS, J, dissenting).]

form the basis for calculating transfer tax. This result would be in direct contravention of the Legislature's intent; had the Legislature intended *any* transfer to be subject to tax as petitioners advocate, regardless of recordation, it could have stated so. However, the Legislature refers only to *the* recorded instrument in § 3 and, under § 5, to *the* property transfer embodied therein. See *Barrow v City of Detroit Election Comm'n*, 301 Mich App 404, 414; 836 NW2d 498 (2013) (noting use of definite article "the" indicates reference to a particular item).

Finally, petitioners assert that the tribunal erred by concluding that the land contracts should be disregarded because construction contracts were entered into contemporaneously with the land contracts. According to petitioners, this argument was already rejected by this Court in *Eastbrook Homes, Inc v Dep't of Treasury*, 296 Mich App 336; 820 NW2d 242 (2012). Petitioners, however, misread the tribunal's decision. The tribunal never determined that the land contracts should be disregarded because construction contracts were entered into simultaneously. Rather, the tribunal properly abided by the statutory language to reject petitioners' claim that the land contracts were the taxable instruments under the SRETTA. In any case, *Eastbrook* did not address the same structured real estate transactions at issue in this case and considered an entirely different legal issue: whether quitclaim deeds that were purportedly granted to create and release security interests were exempt from transfer tax under the SRETTA's exemption provisions. *Id.* at 354. *Eastbrook*, therefore, is not only distinguishable, but is also irrelevant to the resolution of the issue before this Court.<sup>5</sup>

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Jane E. Markey  
/s/ Anica Letica

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<sup>5</sup> Petitioners appear to claim that *Eastbrook* supports the proposition that the structured transactions in this case had a legitimate business purpose and were not created solely for tax avoidance purposes. The tribunal made no ruling in this regard and *Eastbrook's* related pronouncements are irrelevant.